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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,283	10/12/2001	Wenbin Dang	GPT-024.01	1639
29755	7590	07/19/2005	EXAMINER	
FOLEY HOAG LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02110-2600			AZPURU, CARLOS A	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,283

Applicant(s)

DANG ET AL.

Examiner

Carlos A. Azpuru

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-28, 40 and 42-60 is/are pending in the application.
- 4a) Of the above claim(s) 29-35, 42 and 45-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-23, 28, 40 and 43 is/are rejected.
- 7) ☒ Claim(s) 24-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

50-0

### **DETAILED ACTION**

Receipt is acknowledged of the request for continued prosecution, claim, amendments, and information disclosure statement filed 05/05/2005.

Applicant has requested rejoined of the no-elected claims. However, the claims as amended are not considered allowable (as will be explained in the action that follows). Further, even if they were, application would have to elect another structure for search purposes, since searching all the structures of these claims would entail an undue burden on this office.

The following rejection is maintained in this action:

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 2-23, 28, 36-38, 40, 43-44 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Wen et al.

Wen et al disclose a biocompatible polymer having phosphate-based linkages and one or more radiosensitizers (see introduction as well as materials and methods).

Art Unit: 1615

The composition may have up to 25% loading level, and may be in the form of microspheres (see page 66, column 2, paragraph 3). Delivery may be for a period of about 50 days (see Figure 1). The limitation to subsequent treatment with electromagnetic radiation is viewed as an intended use since applicant is claiming a composition, not a treatment. Further, limitations drawn to the reduction in doubling time, inhibition of neoplasm by reduction in volume, therapeutic index and ED50 are considered inherent properties of the same biocompatible polymer containing radiosensitizers as disclosed by Wen et al. The instant claims are anticipated by Wen et al.

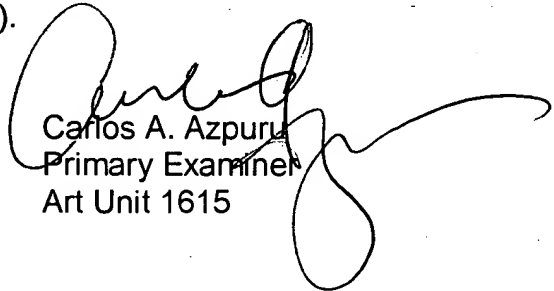
Claims 24-27 are objected to as dependent upon a rejected base claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Carlos A. Azpuru  
Primary Examiner  
Art Unit 1615

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